FORMATIVE ASSESSMENT IN LARGE CLASSROOMS

Ugh…I can’t do anymore!

FORMATIVE V. SUMMATIVE

- Which one is
  - Ongoing
  - Specific
  - Varied
  - Positive
  - Corrective
  - Prompt

OFTEN

K.I.S.S.

- $f(x) = a_0 + \sum_{n=1}^{\infty} \left(a_n \cos \frac{n\pi x}{L} + b_n \sin \frac{n\pi x}{L} \right)$

COME ON…GET TO THE IDEAS

- The Exit/Entrance Ticket
- Corners
- Carousel Brainstorming
- ABCD cards
- Keep the Question Going

MINUTE PAPERS

THINK/WRITE-PAIR-SHARE

MORE IDEAS

- Riding the Carousel: Making Assessment a Learning Loop by the Continuous Use of Grading Rubrics
- Available at Canadian Legal Education Annual Review…online. Or through me.

1. The Exit/Entrance Ticket[1]

Exit Tickets – The exit ticket is simply a question that is posed to all students prior to class ending. Students write their answer on a card or piece of paper and hand it in as they exit (hence exit pass). This formative assessment technique engages all students and provides the all-important evidence of student learning for the teacher.

The exit ticket is a great *in class assessment* tool that can also help plan instruction. Teachers gain understanding of who knows what and if certain subjects need additional instruction time — something that can be lost when one or two consistent hand-raisers suggest learning proficiency for the entire classroom.

You can also group students in teams the next class based on their answers, with one of the students in each team having a good understanding of the solution or answer. This empowers students to help each other and gives them varied perspectives on possible alternative answers.

Entrance Tickets – Here the Professor asks a question at the start of a class and students write their responses on index cards or strips of paper. She uses them to assess initial understanding of something to be discussed in that day's class or as a short summary of understanding of the previous class. She designs the question so it is easily interpreted and analyzed, allows time for herself and/or the students to analyze the responses, and adjusts the lesson accordingly (if needed).

2. Corners

While this idea can take on a number of different iterations, the foundation of it is consistent; each classroom corner represents a different answer or view on a different question or theory. When a question or topic is being discussed, each student goes to the corner that best represents his or her answer. Based on classroom discussion, students can move from corner to corner adjusting their answer or opinion. Corners don't have to represent answers. They can also represent students' comfort with or understanding of the topic. If they don't understand the topic being discussed, they can go to one corner with students of a similar level of understanding. Corners can then be paired with other corners for student discussion

3. Carousel Brainstorming

In this concept, the class is split up into groups of four to five students. Each group gets their own chart and colored marker. The idea is to have each group write down what they know about a sub topic or possible answers to an open-ended question. Place a time limit on each group and when the time is up, have each group pass their chart along to another group, or move to the next chart. Students must read what the other groups have recorded for answers and then add to the list. They can also circle or

[1] These approaches are based on ideas discussed on the Northwest Evaluation Association website (NWEA.com).

highlight answers that they feel hit the mark or add question marks to answers they feel missed the mark. When the charts have been with each group they can be reviewed as a class.

4. ABCD Cards

While students can use the thumbs up or down technique to provide answers to questions with only one answer, the ABCD Cards can be used for questions that have one answer, multiple answers, or no right or wrong answer at all. Each student is given a set of cards. When there's a question or problem posed, they can signal the correct answer by holding up the appropriate card. By interspersing answers that are common misconceptions, the Professor will also be able to identify areas of student need. If you find that students tend to wait to see what other classmates are raising as a letter before answering on their own, you can employ other formative assessment techniques, like randomly selecting a name and having that student help provide the correct answer. This formative assessment idea does require a limited set of answers, and the Professor may need to write down what answer corresponds to what letter. The Professor may also combine this with the Corners approach. In this way, the Professor combines each answer group in the corners of the room. Then students can move as the discussion ensues.

5. Keep the Question Going

With this formative assessment technique, the Professor asks one student a question and then asks another student if that answer seems reasonable or correct. Then, he asks a third student for an explanation of why there is an agreement or not. This helps keep all the students engaged because they must be prepared to either agree or disagree with the answers given and provide explanations. The Professor may also utilize another technique, the Bean Bag Approach, with this one. The Bean Bag Approach helps move the discussion along by having the student speaking hold the bean bag. That student "chooses" the next speaker by tossing the bean bag to him or her.

RIDING THE CAROUSEL: MAKING ASSESSMENT A LEARNING LOOP THROUGH THE CONTINUOUS USE OF GRADING RUBRICS

Sandra L. Simpson*

The goal of all teachers should be to educate all students in the classroom. To reach this goal, however, assessments in the law school classroom must change to be more formative rather than simply summative in nature. It is difficult, however, for law schools to remain economically viable if they do not maintain large, lecture-style classes. Formative feedback, then, could become overwhelming to the professor. This article puts forth a solution: create solid grading rubrics at the beginning of the semester and allow the students to work with the rubric throughout the semester. In this way, the students gain skills and learn the professor's expectations. Using this method, learning will be increased for both professor and student. Further, a well designed and well utilized grading rubric will actually make the professor's grading more efficient and more accurate. The article provides the reader with numerous, simple, time-saving ways to utilize the grading rubric. Readers will also find several examples of rubrics throughout the piece as well as at the end.

L'objectif de tout professeur devrait être de rejoindre tous les étudiants de son cours à travers son enseignement. Toutefois, afin d'atteindre cet objectif, les modalités d'évaluation utilisées dans un cours de droit doivent changer, afin de devenir formatives plutôt qu'uniquement des outils de correction. Ce type de changement présente des difficultés pour les facultés de droit cependant, puisqu'elles doivent maintenir de grands cours magistraux afin de rester économiquement viables. Dans ce contexte, une évaluation axée sur la formation pourrait

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devenir onéreuse pour un professeur. Cet article propose la solution suivante: créer des rubriques d'évaluation en début de session, et permettre aux étudiants de se familiariser avec ces rubriques durant le cours de la session. De cette manière, les étudiants pourront à la fois acquérir des habiletés, ainsi que mieux comprendre les attentes du professeur. En utilisant cette méthode, l'apprentissage sera amélioré à la fois pour les étudiants et le professeur. De plus, une rubrique bien conçue et bien utilisée permettra au professeur de rendre sa correction plus rapide et plus uniforme. Cet article fournit au lecteur plusieurs exemples de rubriques d'évaluation, ainsi que différentes approches afin d'utiliser des rubriques dans le cadre d'un cours de droit.

1. INTRODUCTION

The goal of all teachers should be to educate all students in the classroom.[1] To reach this goal, however, assessments in the law school classroom must change, becoming formative in nature. As competition for U.S. News and World Reports rankings and top high performing students continues to heat up,[2] law schools are increasingly aware that the current assessment structure in the law school classroom may not be successful.[3] "From the LSAT through law school classes and ending with the bar examination, the methods of assessing potential lawyers involve testing a very narrow range of skills and assessing those skills within an equally narrow range of test methodologies."[4] "Issues of assessments in law school have troubled deans, administrators, and professors since as early as the 1920's."[5] Traditional law school assessments, which consist of one end-of-semester high stakes exam, are rigid, and only a "snap-shot" assessment of a moment in time.[6] Law school grading systems are criticized for relying on this method of assessing

1 "The end-of-semester essay examination holds a privileged, virtually iconic place in legal education. This most important and uniform practice of assessment used in law school is, in the language of educational theory, entirely summative: although it measures achievement, its after-the-fact character forecloses the possibility of giving meaningful feedback to the student about progress in learning." See William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) at 164. *Cf.* Phillip C. Kissam, "Law School Examinations" (1989) 42 Vand. L. Rev. 433 at 436 (noting that the practice of a single end-of-semester exam allows faculty to prioritize their scholarship and other commitments over frequent student assessments and feedback).

2 Alfred L. Brophy, "The Emerging Importance of Law Review Rankings for Law School Rankings, 2003–2007" (2007) 78 U. Colo. L. Rev. 35 at 37-38; Sullivan, *ibid.* at 33.

3 *Ibid.*

4 Andrea A. Curcio, "Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law Schools Do it Better?" (2009) 27 Quinnipiac L. Rev. 899 at 899.

5 Douglas A. Henderson, "Uncivil Procedure: Ranking Law Students Among Their Peers" (1994) 27 U. Mich. J. L. Ref. 399 at 401.

6 Stacey Reeves & Barbara "Pokey" Stanford, "Rubrics for the Classroom: Assessments for Students and Teachers" *The Delta Kappa Gamma Bulletin* (Fall issue 2009) 24 at 25.

students;[7] these types of exams lead to arbitrary grading, unfair rankings, and poor student self-esteem.[8] Further, they do not help all students master the material or improve their critical thinking skills. The goal should be to help all admitted law students succeed and become competent novice attorneys. To reach this goal, assessment can "have a significant positive influence on what is learned in classrooms and on how knowledge and competence are demonstrated."[9]

Law schools, however, do not have to change their reliance on the use of single end-of-semester evaluations in order to improve student mastery and to help students improve their critical thinking skills. Law school professors simply have to create and use well developed grading rubrics, which are utilized throughout the semester, to assist their students. This article first gives a background on the development of grading rubrics. Second, the article describes the use of grading rubrics in undergraduate institutions. Third, the article analyzes why law schools use the end-of-semester final exam as their only assessment of student mastery. Fourth, the article gives practical guidance in developing rubrics for use in the law school classroom. Lastly, the article shows the reader various advantages to using rubrics throughout the semester in the classroom.

2. ASSESSMENT IN THE K-12 EDUCATIONAL SYSTEM

The K-12 educational system has been studying and changing assessment techniques, including the creation and utilization of effective assessment rubrics, since the Soviet's launching of Sputnik in October of 1957 spawned new fears about decreasing dominance of the United States in the educational realm.[10] As the United States began to focus more on education, enthusiasm grew for better indicators that measured progress toward the goal of "providing all students with a good education."[11] The 1990s brought the "standard-based reform movement"[12] which sought to identify "content standards (*i.e.*, what students should know), delivery standards (*i.e.*, how schools will ensure that all students have a fair chance of achieving the standards), and performance standards (*i.e.*, the level at which students should know the important content)."[13] Then in May of 1990, the National Assessment Governing Board approved a document that endorsed the establishment of three levels of achievement: "basic, proficient, and advanced."[14] This began the shift away from the standardized test model with a right or wrong answer to a focus on the previously ignored "important aspects of cognition and learning such

7 See Sophie M. Sparrow, "Describing The Ball: Improve Teaching by Using Rubrics — Explicit Grading Criteria" (2004) 2004 Mich. St. L. Rev. 1 at 37.

8 *Ibid.*

9 James W. Pellegrino, Gail P. Baxter & Robert Glaser, "Addressing the 'Two Disciplines' Problem: Linking Theories of Cognition and Learning with Assessment and Instructional Practice" (1999) 24:1 Review of Research in Education 307 at 308.

10 See generally *ibid.* at 318.

11 *Ibid.*

12 *Ibid.* at 319.

13 *Ibid.*

14 *Ibid.*

as conceptual understanding, reasoning, and complex problem solving."[15] Assessment, then, began to be seen as a way to improve teaching and learning rather than grading, because the focus began to drift away from standardized testing and more towards providing focused feedback to students on a continual basis.[16] This shift brought with it a rise in "innovative multilevel scoring criteria or rubrics that gave consideration to procedures, strategies, and quality of response ... over right/wrong scoring."[17]

Throughout the 1990s, it became clear that assessment must be ongoing throughout the year in order to really improve teaching and learning.[18] Hence the rise in formative assessment[19] designed to help the teacher "promote [a] deep[er] understanding by students."[20] To accomplish this goal, teachers needed to use assessments that encourage students to "reflect on and to reconcile their conceptions [of learning] with those of others."[21] The use of formative assessments throughout the semester, with its continual feedback loop, assists students in making specific adjustments in areas in which they are struggling to achieve success.[22]

With the development of rubrics which reflect goal specific content standards and performance standards, a law professor can follow in the footsteps of the K-12 education and provide students specific feedback. A law professor can also learn from the lessons being discovered in the undergraduate classroom.

3. USING ASSESSMENT RUBRICS IN THE COLLEGE CLASSROOM

Grading and assessing students with rubrics is therefore not a new concept. The concept of using rubrics for assessment has gained a foothold in the college classroom. Student learning improves when professors develop scoring rubrics before the project/exam is assigned.[23] The creation of scoring rubrics requires the professor to think in advance about what skills the students should obtain (both

15 *Ibid.* at 320.

16 *Ibid.* at 321.

17 *Ibid.*

18 *Ibid* at 325.

19 Assessment can be formative, summative, or a combination of both. Roy Stuckey *et al.*, *Best Practices for Legal Education: A Vision and a Road Map* (Columbia, SC: Clinical Legal Education Association, 2007) at 255. Formative assessment is meant to measure where a student is at any moment in time and to help that student improve in his/her mastery of a certain skill, *ibid.* This type of assessment is feedback intense — taking a large amount of time on the part of the assessor in giving feedback, *ibid.* at 254. Summative assessment, to the contrary, is used to measure a student's mastery of a skill set, *ibid.* at 255. This type of assessment takes less time on the part of the assessor as less feedback is given. Assessment, of course, can also be a combination of both methods, see Curcio, *supra*, note 4 at 931.

20 Stuckey, *ibid.*

21 *Ibid.*

22 *Ibid.*

23 See *e.g.* Ahrash N. Bissell & Paula P. Lemons, "A New Method for Assessing Critical Thinking in the Classroom" (2006) 56 BioScience 66 at 70.

content retention and critical thinking skills) and to be explicit with students regarding the essential skills to be developed.[24] Further, developing a scoring rubric prior to starting a unit of study allows a professor to provide sample questions and the rubric during the class time so that students were aware of the quality required for an advanced answer, and the students could easily check their answer with the sample and the rubric.[25] This vastly improved the quality of the students' answers and taught students to "reflect and think about their own thinking (and writing) abilities — a concept referred to as metacognition."[26] What is particularly striking is that professors are finding that developing detailed scoring rubrics and having students practice with them improves students' critical thinking and problem solving skills.[27] Thus, the literature suggests that student performance and learning is enhanced by using detailed rubrics throughout the semester.

4. THE NEED FOR BETTER ASSESSMENT THROUGH AFFECTIVE SCORING RUBRICS IN THE LAW SCHOOL CLASSROOM

Since teaching problem solving and critical thinking is as important as teaching content in the law school classroom,[28] it is surprising that improving assessments has not gained more popularity in law school classrooms.[29] The one end-of-semester summative assessment is likely the least effective way to teach a student to improve their critical thinking skills.[30] Further, because learning to read and write about the law is like learning a foreign language to most students, use of formative assessments is necessary to assist students in identifying their weaknesses and improving in those areas.[31] Then why do law schools utilize this summative, end-of-semester assessment model?

Contrary to popular thought, law schools have not always graded with an end-

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24 *Ibid.*

25 *Ibid.* See also Sandra McCollister, "Developing Criteria Rubrics in the Art Classroom" (2002) 55 Art Education 46, 51.

26 Bissell, *supra*, note 23 at 70.

27 *Ibid.* See also Maud Hickey, "Assessment Rubrics for Music Composition" (1999) 85 Music Educators Journal 26 at 27 (finding rubrics not only advanced thinking, it helped students be more sensitive self editors of their own work).

28 Sullivan, *supra*, note 1 at 13, suggesting that problem solving and critical thinking should be given the same weight as content.

29 Robert C. Downs & Nancy Levit, "If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices" (1997) 65 University of Missouri-Kansas City School of Law 819 (stating "Law professors rely on some apparently sound, but largely untested, pedagogical reasons for adhering to the traditional essay examination format" at 824).

30 *Ibid.* at 823 (stating that the problems with "one shot" exams include the lack of consideration of a student's distinct characteristics or abilities, the assessment provides little feedback to students or employers, and examinations often contain faults like sampling errors, ambiguity, and length).

31 Jim Chen, "Law as a Species of Language Acquisition" (1995)73 Wash. U.L.Q. 1263 at 1286.

of-semester summative assessment. In fact, United States law schools formerly used regular and even weekly assessments.[32] Up until the late 1800s, schools like Harvard, Cornell, Litchfield, University of Pennsylvania, and Columbia utilized daily and weekly oral and written examinations.[33] As this is an expensive way to teach students due to the need for small class sizes, by the 1870s law schools started to move to the model of using final exams as the "sole measure of student performance."[34] Harvard's Dean, Christopher Langdell, first used the case method and the sole final exam which allowed one professor to teach and assess a high volume of students, and allowed the law school to be self-supporting.[35] Since this economic model was advantageous to law schools, the use of the one end-of-semester test to evaluate students' mastery of the subject became commonplace in United States law schools.[36]

Because this model has been in place for over 140 years, there are barriers to changing the current system. Large class sizes combined with the lack of teaching assistants to help with grading[37] and the lack of formal training on creating assessments[38] makes it difficult for law schools to leave this system behind. However, if law schools continue to wish to educate students,[39] better formative assessments are needed to improve student learning and improve students' ability to pass the bar.

To improve students' critical thinking skills and to improve students' mastery of the subject while at the same time allowing professors to teach a large volume of students, one simple change is to create workable, useful grading rubrics designed to reflect the classroom goals and to be used in various ways throughout the semester — not just for grading. In fact, the creation and use of rubrics has been consist-

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32 See Linda R. Crane, "Grading Law School Examinations: Making a Case for Objective Exams to Cure What Ails Objectified Exams" (2000) 34 New Eng. L. Rev. 785 at 786; Steve Sheppard, "An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law School Final Exams" (1997) 65 University of Missouri-Kansas City School of Law 657.

33 Sheppard, *ibid.* at 665–71.

34 Ron M. Aizen, "Four Ways to Better 1L Assessments" (2004) 54 Duke L.J. 765 at 768, citing Steven Friedland, "A Critical Inquiry into the Traditional Uses of Law School Evaluation" (2002) 23 Pace L. Rev. 147 at 155.

35 Aizen *ibid.* at 768, citing Russell L. Weaver, "Langdell's Legacy: Living with the Case Method" (1991)36 Vill. L. Rev. 517 at 576.

36 Aizen, *supra* note 34 at 768-69, citing Sheppard, *supra* note 33 at 676.

37 Aizen, *ibid.* at 769, citing Dennis R. Honabach, "Precision Teaching in Law School: An Essay in Support of Student-Centered Teaching and Assessment" (2002) 34 U. Tol. L. Rev. 95 at 103; Martha C. Nussbaum, "Cultivating Humanity in Legal Education" (2003) 70 U. Chicago L. Rev. 265 at 273.

38 Aizen, *supra*, note 34 at 769-70, citing Crane, *supra*, note 32 ("Law professors receive little, if any, training or guidance for teaching, drafting, and grading exams in other than the 'traditional' ways" at 801).

39 Stuckey, *supra*, note 19 at 265, citing Accrediting Commission for Senior Colleges and Universities, "Handbook of Accreditation" (2001) at 44, (standards 2 & 4), online: Western Association of Schools and Colleges <http://www.wascsenior.org/findit/files/forms/Handbook_of_Accreditation_2008_with_hyperlinks.pdf>.

ently encouraged by education experts in pre-collegiate and higher education contexts.[40] The use of rubrics makes grading more consistent and fair.[41] Further, rubrics, when used throughout the semester, allow students to self reflect on their own work and to be better editors of their peers' work.[42] Moreover, rubrics, when given to students before the assessment, allow students to focus their work on the skills that will be assessed. The students know, before the graded assessment, what will be expected of them. Lastly, rubrics provide the student and the teacher a common language to be used when discussing a student's abilities, shortcomings, and performances.[43] In order to use an effective rubric throughout the semester, an understanding of assessment and the creation of a rubric are necessary.

5. OVERVIEW OF AN EFFECTIVE RUBRIC AS AN ASSESSMENT TOOL

Creating a rubric is an integral part of the assessment loop for the teacher and the student. Thus, producing an effective rubric requires an understanding of what an effective assessment means. Although the word "assessment" sounds technical, all professors "assess" students. Assessment simply means "collecting information about student learning."[44] Professors assess students daily by listening to answers to questions, watching student behavior in the classroom, grading quizzes, monitoring the classroom website, and so forth.[45] What makes assessment effective, however, is that it is "ongoing, effective, and sustainable."[46] Assessment must be like a carousel; it is a loop of learning. First, the "student learning objective" or "learning goals" must be identified.[47] Second, the professor "gathers information about how well students are meeting objectives."[48] Third, the assessing professor "interprets such information and looks for common themes of competence and struggles."[49] Lastly, the professor "uses such information to improve teaching."[50] It is this wheel of constant reflection that improves teaching and student learning. Without a con-

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40 Veronica Boix Mansilla et al, "Targeted Assessment Rubric: An Empirically Grounded Rubric for Interdisciplinary Writing" (2009) 80 Journal of Higher Education 334 at 336.

41 *Ibid.*

42 Christine N. Coughlin, Lisa T. Elroy & Sandy C. Patrick, "See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum" (2010) 26 Ga. St. U. L. Rev. 361 at 410.

43 These are the advantages I see in my classroom when I use my rubric. For other uses of rubrics in the classroom see Sparrow, *supra*, note 7.

44 Michael Hunter Schwartz, Sophie Sparrow & Gerald Hess, *Teaching Law be Design: Engaging Students from the Syllabus to the Final Exam* (Durham, NC: Carolina Academic Print, 2009) at 135.

45 *Ibid.*

46 *Ibid* at 137.

47 *Ibid* at 136.

48 *Ibid.*

49 *Ibid.*

50 *Ibid.*

stant loop of reflection by both teacher and student, students continue to perform poorly on the semester-end exam; and the professor gets more and more frustrated with the poor performance.[51] This frustration and poor performance can be changed, however, if the professor creates a good rubric for the final exam or paper at the beginning of the year and uses that rubric throughout the semester[52] to assess students formatively,[53] to gain knowledge of the students' competence and shortcomings, and to give students the practice they need to be competent test takers and masters of knowledge. The rubric can then be used to evaluate the final exam or paper for a summative assessment.[54]

The current end-of-semester high stakes assessment program at most law schools leaves many students behind in both learning and reflection on what needs to be improved.[55] Creating an effective grading rubric, however, which reflects classroom goals and using this rubric throughout the semester will assist the students' mastery of the skills and material necessary to being a competent, novice lawyer.[56] This is true even if the professor chooses to stay with the same semester-end, high stakes, grading model.[57]

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51 *Ibid.*

52 The professor need not complete the semester-end assessment at the beginning of the year to create the rubric. The professor should know prior to the beginning of the year where he or she wants the students to be, competency-wise, by the end of the semester. The time taken to reflect on student competency at the beginning of the semester will be time saved at the end of the semester when grading exams or papers. Once the professor narrows down the skills he or she wants the students to have at the end of the semester, the professor is well on his or her way to creating the rubric.

53 A formative assessment is an assessment designed to give students feedback and assist in the learning process rather than to assign a grade, see Schwartz, *supra* note 44 at 136.

54 A summative assessment is an assessment designed to assign a grade, to evaluate students rather than to help them learn a skill or concept, *ibid.* at 154.

55 This is not to say that creating a rubric and using it throughout the semester will ensure that every student is successful, but it will improve student learning; it will help to focus your teaching; and it will make your semester-end grading more efficient and fair.

56 Barbara M. Moskal, "Recommendations for Developing Classroom Performance Assessments and Scoring Rubrics" (2003) 8:14 Practical Assessment, Research and Evaluation 1, online: P.A.C.E. <http://pareonline.net/getvn.asp?v=8&n=14>. However, one should be aware that good rubrics get changed every time they are used; this is because the teacher must be reflective as to what parts of the rubric are not working or could better describe the skills that are being assessed. This is a fluid process and there is no set form to a rubric.

57 Even in classes with numerous students, it should be noted that there are many ways to assess students which do not "kill" or overwork the professor. The following are assessments that I have used in class to quickly analyze what my students are learning, how my teaching is perceived, and what questions the students have but are reluctant to ask: multiple choice questions, which take some time to create but are easy to grade; student surveys which allow students to voice an opinion on their own learning; flow charts where the students are asked to fill in the details allowing me to quickly see what they are grasping and what they are still struggling with; quick writes, which are two

Before a professor can utilize the scoring rubric during the semester however, that professor must first understand what a rubric is and what its advantages are. A rubric is simply a matrix describing various levels of competency for various skills.[58] Rubrics "identify the knowledge and skills a teacher assesses and provide[s] criteria for how a student demonstrates success in these skills."[59] Rubrics go beyond a scoring checklist to describing what the performance standards are; in other words, "[checklists] cannot do what rubrics can do, which is to describe desirable qualities as well as common pitfalls in student work."[60] Checklists can only measure whether certain criteria are met.[61] Rubrics, however, go beyond checklists and help the professor measure the "extent to which the criteria are met."[62]

Rubrics also enhance the validity and reliability of the grading process.[63] Commonly there are express concerns about the validity of rubrics in general. These concerns are well-founded, but "[a] well-designed scoring rubric cannot correct for a poorly designed assessment instrument."[64] As discussed below, professors should start with fully developed objectives for what they are hoping to assess. Because the validity of an assessment instrument is largely tied to what a professor is trying to assess, the purpose or objective of the assessment must be spelled out clearly as to how the student will display his or her knowledge.[65] Further, as will be discussed in depth below, rubrics help in the reliability and consistency of the assessment scores. Reliability is defined as a test where the student would attain the "same score" regardless of when the assessment was completed, when the assessment was scored, and regardless of who scored it.[66] "On an unreliable examination, a student's score may vary based on factors that are not related to the purpose of the assignment."[67] To avoid this result and to gain reliability, properly designed rubrics eliminate unreliable results by formalizing the "criteria at each score level" thereby, reducing scoring discrepancies.[68] Further, as all professors understand, fatigue and mood can affect a grade given. Well-designed rubrics, containing specifi-

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minute short answers to give me a quick picture of trends and holes in their learning; and student reflections on a note card which keeps the students' thoughts brief, but still allows me to evaluate where they are. See also Schwartz, *supra*, note 44 for a complete discussion of various forms of continuous assessment.

58 McCollister, *supra*, note 25 at 46.

59 Sparrow, *supra*, note 7 at 8-9.

60 Heidi Goodrich Andrade, "Teaching with Rubrics: The Good, The Bad, and The Ugly" (2005) 53 College Teaching 1 at 1.

61 Barbara M. Moskal & Jon A. Leydens, "Scoring Rubric Development: Validity and Reliability," (2000) 7:10 Practical Assessment, Research and Evaluation 1 online: P.A.C.E. <http://pareonline.net/getvn.asp?v=7&n=10> [Moskal, "Rubric"].

62 *Ibid.*

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

cally spelled out descriptions with scoring criteria, can decrease this fluctuation and unreliability of grading.[69]

Each rubric, however, is different. Two types of rubrics are common: an axis rubric and an outline rubric. The axis rubric is based on an X and Y axis. On the Y axis or the left-hand side, the professor should list the objectives or skills he or she wants the students to master. On the X axis or across the top, the professor lists the levels of performance. Where the two axis meet, the professor will describe what each level looks like.

ILLUSTRATION 1

Axis Rubric

	Beginning **1**	**Developing** **2**	**Accomplished** **3**	**Exemplary** **4**	**Score**
Stated Objective or Performance	Description of identifiable performance characteristics reflecting a beginning level of performance.	Description of identifiable performance characteristics reflecting development and movement toward mastery of performance.	Description of identifiable performance characteristics reflecting an accomplished level of performance.	Description of identifiable performance characteristics reflecting the mastery of performance.	

The next illustration goes beyond the basic rubric and shows a substantive law example. Note that the levels are identified differently, but are similar in meaning.

69 *Ibid.*

ILLUSTRATION 2

Axis Torts Rubric[70]

Objectives	Exemplary	Competent	Developing	Comments/ Score
Student's Knowledge of Law (25%)	Accurately identifies all elements, factors, and sub-issues. Accurate means the student's statements about the law are completely correct and none of the necessary elements, factors, or sub-issues are missed.	Accurately indentifies all elements of the test. Student missed one factor or issue. All of the rest of the elements, factors, and sub-elements are included and correct.	Accurately identifies all elements of the test. Student missed two or more factors or sub issues. Of the elements identified one or more is not completely correct.	

70 Part of this rubric was taken from Schwartz, *supra* note 44 at 247. The remainder of the rubric was created by the author.

Objectives	Exemplary	Competent	Developing	Comments/ Score
Student's ability to apply the facts of the hypothetical to the law (65%).	Thoroughly applies specific facts and makes reasonable inferences from facts to legal elements, factors, and sub-issues. A thorough application will include a comparison of the facts from the hypothetical to the facts of the precedent cases which create the law. It will also include pointing out the weaknesses and the strengths of the student's application.	Applies facts and reasonable inferences from facts to legal elements, factors, and sub-issues but a few areas are not thorough. These few areas may point out connections between the hypothetical facts to the precedent case facts, but the student does not point out the weaknesses and the strengths of his or her conclusion.	Applies facts and reasonable inferences from facts to legal elements, factors, and sub-issues. More than a few areas are not thorough. Those three or more areas lack the connections between the hypothetical's facts to the facts of the precedent cases. The student fails to consistently point out the strengths and the weaknesses in his or her analysis.	
Student's Writing Format	Writing is clear, concise, and precise. It is clear on the first read through. Paragraphing and sentence structure is coherent. Followed the requested format.	Writing has minimal, minor errors, and may have minor organization or format errors. These errors are distracting but do not detract from the work.	The writing has numerous minor errors and 1-2 major errors with formatting, organization, or writing. These errors are frequent enough to detract from the beauty of the work.	

The outline rubric uses a different format from the axis rubric. Rather than listing the stated objectives or performance on the Y axis as above, the outline rubric lists the objectives or performance goals in outline form. Under each objective or performance goal, the professor lists and describes the levels of performance. Further, the following outline rubric represents only one part of the complete

rubric for an objective memorandum.

ILLUSTRATION 3

Outline Rubric

2. Question(s) Presented ...../10

Very Good (A) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, uses significant facts to support the claim (and gives the reader a clear picture of what is going on), cites the law and what the statute means, writes in the active voice, and puts the questions in logical order and in the order they are presented in the paper. The questions are also stated generally-meaning the names of the parties are not used, for example. Question is very readable on the first read.

Good (B) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, uses some facts to support the claim (but not enough to fully describe the situation), cites the law, writes in the active voice, and puts the questions in logical order and in the order they are presented in the paper. The questions are also stated generally-meaning the names of the parties are not used, for example. Question is not readable on the first read.

Fair (C) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, student does not use facts to support the claim; student does cite the law but not specific enough; student writes in the active voice; and student puts the questions in logical order and in the order they are presented in the paper. The questions are not stated generally-meaning the names of the parties are used, for example. Question is not readable on the first read.

Significant Improvement Needed (D) — Student does not follow instructions on how to physically present a question presented (i.e. student does not block indent). It is not presented as a question; there are no facts used to support the claim; the law is not cited; the law is not described; student struggles with the active voice; the questions are not in logical order and are not stated generally.

6. CREATING AN EFFECTIVE RUBRIC

After understanding what rubrics are and what their advantages are, the next step is to create a rubric. First a professor must define what he or she is assessing. Although every professor has a sense of what he or she is trying to assess, an effective rubric is designed "to make these criteria transparent so that we can improve our grading and our ability to enhance student learning."[71] To develop a rubric, the professor must be clear as to the "qualities that need to be displayed in student's work to demonstrate proficient performance."[72] The first step in articulating those

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71 Schwartz, *supra*, note 44 at 161.

72 Barbara M. Moskal, "Scoring Rubrics: What, When, and How?" (2000) 7:3 Practical Assessment, Research and Evaluation 1, online: P.A.C.E. <http://pareonline.net/getvn.asp?v=7&n=3> [Moskal, "Scoring"], citing SM Brookhart, "The Art and Science of Classroom Assessment: The Missing Part of Pedagogy" (1999) 27:1 ASHE-ERIC Higher Education Report 3.

qualities is to complete the syllabus for the course.[73] The syllabus should convey the goals for the course.[74] Then, for each day of the syllabus, identify the skills and/or information the students should master in that day. These daily classroom goals should relate to one of the broad goals for the course.[75] Next, the professor must decide what skills and doctrinal material from each day he or she plans on assessing at the end of the course. At the end of law school will the students need this skill/information to be a competent, novice attorney? If the answer is yes, write down that skill or information. Once that list is made, group the skills and information into categories. These categories become the stated objectives on the rubric (on the Y axis or as part of the outline). These objectives will be assessed.

Second, the levels of performance must be named. For example, levels of performance (or descriptors) in rubrics, could use "very good," "good," "fair," and "significant improvement needed."[76] Other descriptive suggestions may include "exemplary," "accomplished," "developing," and "beginning."[77] Determining what descriptors best suit an individual's teaching style takes trial and error, and some patience. Using descriptors that accurately reflect a student's level is helpful to the student throughout the semester. For instance, almost all students should be in the "beginning" or "significant improvement needed" stage at the beginning of the semester because they are just learning the skill or content. Students, however, should move up the descriptors "ladder" as the semester progresses.

After the objectives and levels are identified, the last step is to determine what the standards will be for each level of performance. These characteristics are often described by "standards."[78] Ask, "What qualities and characteristics would this learning objective have?"[79] And, "How would this learning objective be described?" In other words, what does this characteristic look like?[80] A good rubric "should describe both strengths and errors, especially in the lower levels of per-

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73 For first time professors, borrow another professor's syllabus for the same subject and locate some old exams and answers so that you can see what skills are being assessed.

74 For an excellent discussion regarding designing syllabus and articulating course goals see Schwartz, *supra*, note 44 at 37–64.

75 *Ibid.* at 65–85.

76 See Illustration 1.

77 My own experience taught me that describing students' performance with "very good," "good," "fair," and "significant improvement needed," were more helpful to my students than the other words shown in illustration 2. According to comments I received from students, they thought these descriptors gave them a clearer picture of how much work they had to do. I am sure some of the students were initially debilitated by receiving a "significant improvement needed" on their first practice of crafting a question presented, but I always address this aspect before returning any student writing assignments. I tell my students that when they are first learning a skill, they should expect to be in the "fair" or "significant improvement needed" category.

78 Dawn M. Zimmaro, "Developing Grading Rubrics" (2004) at 3, online: University of Texas at Austin Measurement and Evaluation Center <http://www.utexas.edu/academic/mec/research/pdf/rubricshandout.pdf>.

79 McCollister, *supra*, note 25 at 50.

80 *Ibid.*

formance."[81] Especially for these lower levels, ask "what type of performance would suggest a very limited understanding of the concepts that are being addressed?"[82] The contrast between the top level performance and the lowest level performance is a good indicator of the criteria for the mid-level performance.[83]

For instance, when teaching a lesson on writing high-quality questions presented in an objective memo, some of the characteristics might be that: (1) it contains facts to describe the client's situation, (2) it is stated generally — meaning, for instance, that the client's name is not used, (3) it describes the law, (4) it states the issue, and (5) it is stated as a question and readable on the first read through.[84] (See Illustration 2 above). Similarly, when concluding a torts unit on duty creation, if the professor wanted to assess the student's knowledge of the law, rubric characteristics for a hypothetical question could include:

> 1. Exemplary: Accurately indentifies all elements, factors, and sub-issues. Accurate means the student's statements about the law are completely correct and none of the necessary elements, factors, or sub-issues are missed.
>
> 2. Competent: Accurately indentifies all elements of the test. Student missed one factor or issue. All of the rest of the elements, factors, and sub-elements are included and correct.
>
> 3. Developing: Accurately identifies all elements of the test. Student missed two or more factors or sub-issues. Of the elements identified one or more is not completely correct. (See Illustration 3 above).

Determining how to describe each level of performance also takes practice and patience. Err on the side of "over-describing" each level so that students can distinguish between each level of quality, and so that students have an accurate picture of what the expectations are for their performance.[85] If you cannot identify meaningful distinctions between the various levels, err on the side of less categories because

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81 *Ibid.*

82 Moskal, "Scoring Rubrics", *supra*, note 72.

83 *Ibid.*

84 See Illustration 1 of my rubric which shows the criteria for questions presented. As can be seen by my rubric, I use a non-matrix type of rubric which shows the criteria under each Roman numeral and the characteristics or descriptors for each level of performance underneath. I developed this rubric for my Legal Research and Writing courses because of the way my course is structured, in that the course builds on each skill in succession. This rubric works well for skills type courses because students can be given parts of the rubric as the semester progresses, allowing them to see how they will be assessed. This type of rubric can also be used in doctrinal classes as skills are built one on the next. For the matrix type template please see Illustration 2 which can be used to add your criteria on the left-hand side while putting the scale on across the top. This type of rubric would be especially handy when used to grade semester-end assessments.

85 One great advantage I have seen in using rubrics which have each level of performance defined for each characteristic being graded is that students may be proficient in one area and struggling in another area. For instance a student may be excellent at spotting issues, but struggle with articulating the correct rule. Allowing a student to see on pa-

it is better to "have a few meaningful score categories then to have many score categories that are difficult or impossible to distinguish."[86] Now that a rubric has been created, it is time to employ this method assessment as a method of teaching.

7. USING RUBRICS THROUGHOUT THE SEMESTER IS A VALUABLE TEACHING TOOL

Once the rubric has been created, it should be used throughout the semester to provide feedback to the students on their learning and to provide feedback to the professor on his or her teaching. "When students are made aware of the rubrics prior to instruction and assessment, they know the level of performance expected and they are more motivated to reach those standards."[87] Rubrics provide essential feedback to the students on specifically how to improve their attainment of course objectives.[88] Further, Barbara Moskal and Jon Levdens state in their article, *Scoring Rubric Development: Validity and Reliability*, "[w]henever possible, the scoring rubric should be shared with the students in advance in order to allow students the opportunity to construct the response with the intention of providing convincing evidence that they have met the criteria."[89]

Professors should go one step further than urged by these experts. Rather than letting the students just see the scoring rubric, Professors should use the scoring rubric throughout the semester to enhance both student learning and the feedback loop between the professor and students. Feedback, early and often,[90] is essential to helping students improve their skill acquisition and in helping professors improve their teaching. In fact, not only is feedback essential to improving student learning, but "[p]roviding students with feedback about meeting course goals enhances student learning."[91] Using rubrics is an excellent method of providing feedback to students because it meets the four essential characteristics of helpful feedback: it is specific, positive, corrective, and prompt.[92] It is difficult, however, to provide feedback that is specific, positive, corrective, and prompt, when there are over 100 students in the classroom. Using scoring rubrics throughout the semester with sample questions, though, can provide essential feedback, help students be more aware of their own learning, communicate a professor's expectations, provide common language between the professor and the student, and provide the professor with helpful feedback on his or her own teaching. This can all be done with minimal additional

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per what they are doing well, and where they are struggling simultaneously instills confidence while still giving the student something on which to work.

86 Moskal, "Scoring Rubrics", *supra*, note 72.

87 Zimmaro, *supra*, note 78 at 4.

88 Moskal, "Scoring Rubric Development", *supra*, note 61.

89 *Ibid.*

90 Schwartz, *supra*, note 44 at 137.

91 Sparrow, *supra*, note 7 at 22.

92 *Ibid* at 145. Specifically: Students get information about specific criteria they have or have not met. Positive: Students find out what they are doing well. Corrective: Students learn about their weaknesses and are given strategies to improve them. Prompt: Students get feedback while the assessment is fresh and in time for the next assessment.

work by the professor.

Because feedback often is lacking in law school and it is an essential component of the learning process,[93] any use of rubrics will improve student mastery. Even if a professor did not choose to use his or her rubric throughout the semester as suggested here, he or she can significantly improve learning by simply handing out the scoring rubric prior to the assessment and discussing it in class.[94] It is more effective however, to give the students pieces of the rubric as your build their skills throughout the semester. For instance, after finishing a unit or skill, hand out the rubric for that unit or skill, and have the students review the rubric and ask questions. Once the question and answer period is over, give students a practice assignment.[95] This practice assignment can take many forms; it can be as simple as showing the students an example question, for instance, and having the students use the rubric to assess the sample. This provides the students with valuable feedback and practice before they are asked to perform.

Larger doctrinal classes can also use rubrics to assess students, provide feedback, and allow students to practice taking exams. First, provide a practice question at the end of a doctrinal unit, such as duty in torts. Have the students take the question home and write out an answer. During the next class period, provide the students with the rubric and ask them to score their answer at home with the rubric. The next class period show the students a good sample answer, and using the rubric, show the students why this answer meets the criteria. In this way, the professor takes minimal class time and no grading time, but has provided the students with feedback that is specific, positive, corrective, and prompt. Further, rubrics can be used to allow students to give each other feedback.[96] In the above example, when the students bring their answers back to class, provide the students with the scoring rubric. Ask them to review it and answer any questions they may have. After this question and answer session, have the students exchange and score each

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93 *Ibid.*

94 I usually take 10 minutes in class to hand out the scoring rubric and to show the students how it works. Students generally ask questions about the categories and/or the descriptors. Sometimes I have given the rubric to the students as a reading assignment and then covered it during the next class period.

95 This practice does not have to be time intensive for you as the professor to give effective feedback to the students. That is the beauty of using rubrics. Once students get use to using the rubrics, they can accurately reflect on and assess their own work and that of their peers. If you do have students hand in their practice, it is easy to provide feedback by circling on the rubric what the students are doing well or where they need improvement.

96 Many of my colleagues find peer assessment to be minimally effective. I find it to be very effective if I provide a very detailed rubric to my students. Once students are taught what a "very good" paper looks like, they become quite adept at editing other's work. Eventually, students become very good at editing their own work. I find peer editing is only effective if the students are adequately prepared. To do this, I provide pieces of the rubric to the students throughout the semester. I then work with the students and the rubric by providing sample answers (both good and bad) for the students to practice assessing. Thus, by the time we get to the peer editing stage, the students know for what to look and what types of comments to make.

other's papers. This provides feedback and allows students to discuss the problem with others. During their scoring time, the professor can mingle with students and listen to what is being said, thereby giving immediate feedback to the professor. These ideas will help provide students with the necessary feedback to help them improve without inundating the professor with practice papers to assess.

Secondly, rubrics can be used to help students become aware of their own learning.[97] Respecting students enough to show them where they are in the process of mastering skills will encourage them to be more reflective of their own skills, improving self-reflection skills or metacognition.[98] Helping students to better assess their own work in law school will help them to better assess their own work in the practice of law. When I return a paper which has been critiqued, I also return the rubric which I used to score it. I then ask students to review their paper, the rubric, and my comments and write down three skills on which they need to work. The students bring this list back to class the next day and turn it in. This process forces students to look at their assessed work and understand their weaknesses. The importance of this was driven home to me last semester when a student came to me after receiving their assessed paper back from me. She told me she had worked really hard and thought she "nailed" the paper, only to receive the "dreaded — significant improvement needed." At first, she said she was so mad at me that she could not "see straight." Then, however, she picked up the rubric and after reviewing it, she was surprised she did not do more poorly.[99]

Third, related to the above point, using rubrics and teaching with them communicates the professor's expectations and provides a common language in which to discuss skills with students. When students come to the professor with their papers and the rubric, a discussion can ensue about the strengths and weaknesses of the writer using common language. For instance, if a student does not understand what is wrong with his or her question presentation, simply telling that student the question needs improvement is not helpful. Telling that student that the question presented does not contain facts which describe the situation is more helpful. Or if a student has not done well on a sample test question, the professor can point out that the student missed several major sub-points of the law. This makes the conversation concrete, and gives the student something solid on which to concentrate in order to improve. In fact, when talking to students, it is helpful to have a good student paper or exam paper to refer to so that the professor can walk the student through a good paper or exam answer with the rubric. This method helps the professor communicate effectively with students.

Lastly, rubrics help professors evaluate their own teaching.[100] If a professor has a good rubric, he or she can track what students are mastering and with what students are struggling. Information from the grading/evaluating process can be

97 McCollister, *supra*, note 25 at 48.

98 Sparrow, *supra*, note 7 at 9.

99 By way of reference, this student ended up doing quite well in the class. She really worked on the skills described on the rubric and significantly improved her writing and analytical skills.

100 Sparrow, *supra*, note 7 at 11.

"used to analyze students' learning and to improve . . . teaching."[101] In Walvoord's book, *Effective Grading: A Tool for Learning and Assessment*, the author points out that using Primary Trait Analysis (PTA) scales, which are similar to scoring rubrics, throughout the semester can provide teachers with valuable feedback pointing out in what areas the students need help.[102] Walvoord analyzes teachers who utilize the PTA scales during the semester to improve teaching and student learning. For example, an English teacher utilized the PTA scale to determine areas of student need in a library assignment.[103] The valuable information this teacher attained included the following: (1) the students misunderstood her directions, (2) the students were modeling their answers after examples which were fine, but a bit immature for what the teacher was expecting, (3) the students were not applying the correct information when requested.[104] The teacher was able to refine what she was teaching because she was able to determine exactly what was going wrong through the use of the PTA.[105] The teacher determined, through her analysis of the PTA, that the students were failing to understand the concept of audience.[106] After back tracking and re-teaching certain areas, 90 percent of students mastered the concept on the next assessment.[107] This PTA or rubric allowed the teacher to separate out the components that students were mastering and tasks they were not.[108] In this way, the teacher did not have to go back through areas the students had already mastered.

Similarly, in the law school classroom, by using the scoring rubric with sample exam questions, the professor can determine exactly what the students have mastered and what they have not. Thus, if a professor notes that his or her students are excellent at rule proofing, or comparing the fact pattern to the law, but are not good at spotting issues, then the professor must change his or her teaching to focus on exercises in issue spotting, for example. This is valuable feedback for any professor to have. If the professor uses grading rubrics throughout the semester, he or she will have a continual loop of feedback regarding where students are in the process of mastering important skills. This process will allow the professor to change the daily lessons to reflect the areas where students need the most help.

7. CONCLUSION

Assessment should be a learning loop with constant information flowing from students to the professor and then back from the professor to the students. To do this without spending every waking minute writing copious notes on students' papers, rubrics should be employed throughout the semester. Even if the law profes-

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101 Barbara E. Walvoord & Virginia Johnson Anderson, *Effective Grading: A Tool for Learning and Assessment* (San Francisco: Jossey-Bass, 1998) at 135.

102 *Ibid.*

103 *Ibid.*

104 *Ibid* at 136.

105 *Ibid.*

106 *Ibid.*

107 *Ibid* at 137.

108 *Ibid.*

sor is only planning to grade the students on one semester-end final, the professor should use his or her scoring rubric throughout the semester to demonstrate to the students how to become proficient at each objective or skill the professor is trying to teach. As proven in the K-12 educational system, and increasingly in the undergraduate college system, law schools should start to provide continued feedback throughout the semester to enhance student performance and learning. The use of scoring rubrics throughout the semester is an effective tool to accomplish this goal.

ILLUSTRATION 4

Rubric for Office Memorandum Second Semester-Statutory Memo

Name .....
Section .....
Overall Assessment .....

1. Heading
Proper form as laid out in the book .....\/0

2. Question(s) Presented .....\/10

Very Good (A) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, uses significant facts to support the claim (and give the reader a clear picture of what is going on), cites the law and what the statute means, writes in the active voice, and puts the questions in logical order and in the order they are presented in the paper. The questions are also stated generally-meaning the names of the parties are not used, for example. Question is very readable on the first read.

Good (B) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, uses some facts to support the claim (but not enough to fully describe the situation), cites the law, writes in the active voice, and puts the questions in logical order and in the order they are presented in the paper. The questions are also stated generally-meaning the names of the parties are not used, for example. Question is not readable on the first read.

Fair (C) — Student uses roman numerals, block indents on the left, and uses single space. Student also states this as a question, student does not use facts to support the claim; student does cite the law but not specific enough; student writes in the active voice; and student puts the questions in logical order and in the order they are presented in the paper. The questions are not stated generally-meaning the names of the parties are used, for example. Question is not readable on the first read.

Significant Improvement Needed (D) — Student does not follow instructions on how to physically present a question presented (i.e. student does not block indent). It is not presented as a question; there are no facts used to support the claim; the law is not cited; the law is not described; student struggles with the active voice; the questions are not in logical order and are not stated generally.

3. Short Answer .....\/10

Very Good (A) — Student directly answers the question with a Yes or No. Student follows the direct answer with a two or three sentence explanation that

really gets to the heart of why the court will decide one way or another. Like the question presented, the information is presented generally. No authority is discussed here.

Good (B) — Student directly answers the question. Student follows the direct answer with a two or three sentence explanation. That explanation, however, does not adequately get to why the court will decide one way or another. Student presents information generally. Student does not discuss authority.

Fair (C) — Student does not directly answer the question. Student does have two or three sentences which answer the question. Student does not demonstrate that he/she really understands why the court will decide one way or another. Student uses client names or other non-general information. Student does not discuss authority

Significant Improvement Needed (D) — Student does not follow instructions on how to give a short answer: student does not answer the question; student is not clear as to the reason why this is the answer; student discusses authority here.

4. Facts ...../20

Very Good (A) — Student starts with a paragraph that tells who the client is and what the client wants or what the problem is, and the student provides a framework for the problem. Student then introduces the legal problem by telling what happened. It is clear from the fact pattern's organization what the elements of the rule are. Further, the student only includes relevant facts and facts that are necessary to paint the picture and tell the story. Facts are objectively presented. Lastly, the last paragraph includes what relief the client wants or what the student was asked to analyze. The reader is left with a clear picture of what happened.

Good (B) — Student starts with a paragraph that tells who the client is and what the client wants or what the problem is, and the student provides a framework for the problem. Student then introduces the legal problem by telling what happened. It is only somewhat clear from the fact pattern's organization what the elements of the rule are. Further, the student does include relevant facts, as well as facts that are necessary to paint the picture and tell the story, but the student also includes some irrelevant facts. Facts are objectively presented. The last paragraph includes what relief the client wants or what the student was asked to analyze. The reader is left with a clear picture of what happened.

Fair (C) — Student does not start with a paragraph that tells who the client is, and what the client wants or what the problem is. The student does provide a framework for the problem. Student then introduces the legal problem by telling what happened, but it is not well organized. It is only somewhat clear from the fact pattern's organization what the elements of the rule are, or it is not clear from the fact pattern's organization what the elements of the rule are. Further, the student does include relevant facts and facts that are necessary to paint the picture and tell the story, but the student also includes some irrelevant facts. Facts are not always objectively presented. The last paragraph does not include what relief the client wants or what the student was asked to analyze. The reader is left with an unclear picture of what happened.

Significant Improvement Needed (D) — Student does not start with a paragraph that tells who the client is and what the client wants or what the problem is. The student does not provide a framework for the problem. Student does tell what

happened but it is not organized in a way to help the reader understand what happened. It is not clear from the fact pattern's organization what the elements of the rule are. Student needs to rethink the importance of the fact pattern's organization. Further, the student does not include enough relevant facts that are necessary to paint the picture and tell the story. Facts are not objectively presented. The last paragraph does not include what relief the client wants or what the student was asked to analyze. The reader is left with an unclear picture of what happened.

5. Applicable Statutes Section: ...../5

a. Students list sections *and text* of the major statutes.
Student lists at least 29 U.S.C. 2612 and 29 C.F.R. 114

6. Discussion Section ...../100

Very Good (A) — Student's first paragraph is in the thesis paragraph form and lays out the general rules and any necessary sub-rules, and lays out how each will be discussed in the paper. Student then starts his/her first StREAC[109] following the same order laid out in the thesis paragraph. It is clear from the student's organization and words where each StREAC starts and ends. Each paragraph contains a topic sentence that signals the reader as to its purpose, direction, and point in the analysis; introduces the legal issue/sub issue to be addressed in the paragraph; summarizes the basic idea in the paragraph; provides a roadmap for the reader. Also present in the topic sentences is the thread which ties all the paragraphs in that StREAC together. Each paragraph ends with a concluding sentence which ties the paragraph together and ties it to the other paragraphs.

Student analyzes the questions by applying the applicable statutes. Student breaks down the statutes into elements and analyzes them separately (with their own StREAC); and where appropriate, the student uses plain meaning, court interpretation, cannons of construction, and legislative history. Student uses the most persuasive authority to support his/her points. Both sides are presented where appropriate.

Here is where the professor can insert the specific areas he or she wants the students to cover. *Good (B)* — Student's first paragraph is in the thesis paragraph form and lays out the general rules and any necessary the sub rules and lays out how each will be discussed in the paper. Student then starts his/her first StREAC following the same order laid out in the thesis paragraph. It is sometimes unclear from the student's organization and words where each StREAC starts and ends. Most paragraphs contain a topic sentence that signals the reader as to its purpose, direction, and point in the analysis; introduces the legal issue/sub-issue to be addressed in the paragraph; summarizes the basic idea in the paragraph; provides a roadmap for the reader. The thread which ties all the paragraphs in that StREAC together is not always present. Most paragraphs ends with a concluding sentence which ties the paragraph together and ties it to the other paragraphs.

Student analyzes the questions by applying the applicable statute(s). Student breaks down the statutes into elements and analyzes them separately (with their

109 StREAC is the legal paradigm used in my legal research and writing classes. Instead of IRAC, I use StREAC. Sub-thesis, Rule, Explanation, Application, Conclusion.

own StREAC); and where appropriate, the student uses plain meaning, court interpretation, cannons of construction, and legislative history. Student uses the most persuasive authority to support his/her points. Both sides are presented where appropriate.

Here is where the professor can insert the specific areas he or she wants the students to cover.

Fair (C) — Student's first paragraph is in the thesis paragraph form and lays out the general rules and any necessary the sub rules, but the student does not lay out how each will be discussed in the paper. Student then starts his/her first StREAC following the same order laid out in the thesis paragraph. It is generally unclear from the student's organization and words where each StREAC starts and ends. StREAC form is confused. A few paragraphs contains a topic sentence that signals the reader as to its purpose, direction, and point in the analysis; introduces the legal issue/sub-issue to be addressed in the paragraph; summarizes the basic idea in the paragraph; provides a roadmap for the reader. The thread which ties all the paragraphs in that StREAC together is not present in most paragraphs. Student's paragraphs do not end with a concluding sentence which ties the response together.

Student analyzes the questions by applying the applicable statute(s). Student breaks down the statutes into elements, but does not analyzes them separately (with its own StREAC); and where appropriate, the student uses plain meaning, court interpretation, cannons of construction, and legislative history. Student does not use the most persuasive authority to support his/her points. Both sides are not presented.

Here is where the professor can insert the specific areas he or she wants the students to cover.

Significant Improvement Needed (D) — Student's first paragraph is not in the thesis paragraph form. It is generally unclear from the student's organization and words where each StREAC starts and ends. StREAC form is confused. Student's paragraphs do not contain topic sentences that signal the reader as to its purpose, direction, and point in the analysis; introduces the legal issue/sub-issue to be addressed in the paragraph; summarizes the basic idea in the paragraph; provides a roadmap for the reader. The thread which ties all the paragraphs in that StREAC together is not present in the topic sentence. Student's paragraphs do not end with a concluding sentence which ties the paragraph together and ties it to the other paragraphs.

Student analyzes the questions by applying the applicable statute(s). Student does not break down the statutes into elements, and does not analyzes them separately (with its own StREAC); and where appropriate, the student does not use plain meaning, court interpretation, cannons of construction, and legislative history. Student does not use the most persuasive authority to support his/her points. Both sides are not presented

Here is where the professor can insert the specific areas he or she wants the students to cover.

7. Conclusion: ...../5

Very Good (A) — It is clear what the rules are, what the issues are, and what the sub-issues are. The student's conclusions are clear. The student's reasons for

his/her conclusions are clear.

Good (B) — It is mostly clear what the rules are, what the issues are, and what the sub-issues are. The student's conclusions are mostly clear. The student's reasons for his/her conclusions are mostly clear. More reasons are needed to support the student's conclusions.

Fair (C) — It is somewhat clear what the rules are, what the issues are, and what the sub-issues are. The student's conclusions are somewhat clear. The student's reasons for his/her conclusions are not clear. More reasons are needed to support the student's conclusions.

Significant Improvement Needed (D) — It is not clear what the rules are, what the issues are, and what the sub-issues are. The student's conclusions are not clear. The student's reasons for his/her conclusions are not clear. More reasons are needed to support the student's conclusions.

8. Format ...../30

Student uses 1 inch margins, 12 point New Times Roman type, proper citation form, and no plagiarism problems. Students get 30 points on a graded assignment for format issues. Once 30 problems are noted, the student loses all the points and the grader stops commenting on the formatting issues — including citation problems.

9. Paper is free of editing problems ...../20

Students can have up to 20 editing errors. Once 20 editing errors are noted, the grader stops noting the errors and student lose 20 points on a graded assignment.

ILLUSTRATION 5

	Beginning 1	**Developing 2**	**Accomplished 3**	**Exemplary 4**	**Score**
Stated Objective or Performance[110]	Description of identifiable performance characteristics reflecting a beginning level of performance.	Description of identifiable performance characteristics reflecting development and movement toward mastery of performance.	Description of identifiable performance characteristics reflecting mastery of performance.	Description of identifiable performance characteristics reflecting the highest level of performance.	

[110]The user of this rubric can state as many objectives as he or she chooses. Simple add another row to the rubric and describe the characteristics of the performance.

ILLUSTRATION 6[111]

RUBRIC for Final Torts Exam — Essay Questions *Exam #.....* *Points ...../120*

Question 7 — Pei v. Dell — Pei's best case against Dell

Overall conclusion —

Pei had a good case against Dell in negligence as he can likely satisfy all 5 elements

Duty — Dell owed a duty to Pei — 4

- General duty of care to all others to prevent harm to foreseeable parties — using the road as driving a car poses a foreseeable threat of harm to any using or near a road
- As someone arriving on the scene of accident, Pei was either driver, passenger or pedestrian using the road
- If negligent, have a duty to rescuers who respond to harm caused by negligent act
- As Pei is a rescuer coming to assist following an accident caused by Dell, Dell owes him a duty of due care

Standard of Care — 4

- Dell held to the reasonable prudent person standard of care — a jury would be asked to judge Dell's behavior against other reasonably prudent people driving on the roads at night in the rain — entering a 50 mph highway on the side of a hill

Breach — Dell breached her duty of care — did not act as a reasonably prudent person when she entered Highway 3

General conditions — Dell on notice of these — 6

- Road conditions — need to drive more carefully when

  Dark night

  Rainy — slippery, reduced visibility
- Dangerous conditions made worse with dangerous intersection — there is a hill to the east, need to pay particular attention — if it was flat, more likely to see person coming using peripheral vision

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111 This rubric is included with the permission of Professor Sophie Sparrow, Franklin Pierce Law Center, 2 White Street, Concord, NH 03301. It is intended solely to show the reader another way to write a grading rubric. If this method is chosen, the professor could create a sample question and a sample grading rubric to use in class with students.

Dell's specific actions or inactions — 20

- Failed to properly look out (east) on highway 3 when entering it
- Failed to look at road — instead looking at CD notes
- Failed to accelerate when entering Highway 3 to avoid colliding with Hart
- Failed to avoid getting in the way of oncoming traffic
- Played music so loud that could not hear Hart's horn
- Failed to take reasonable action after the accident to prevent or reduce other harms — duty to act when caused dangerous situation — assuming that Dell was physically capable of it, should have contacted emergency services so that trailer clearer sooner
- *Custom* of playing music loud and engaging in distracting activities — such as talking on a cell phone — is dangerous and so following custom will not help Dell show her behavior was reasonable
- *Custom* may be violated when Dell did not look and played CD too loudly

Dell's behavior may have violated a statute — 8

- Most jurisdictions have laws about driving, including when to yield, conducting proper lookout when entering a highway
- Assuming such law exists, and using majority rule negligence per se, Dell's acts would violate the statute and show Dell breached her duty of care because

  1) Pei is in the group meant to be protected — traffic laws are designed to protect the safety of those using and surrounding the road — this could include those who arrive to help after an accident

  2) The kind of harm Pei suffered — physical injury — is the kind that traffic laws are designed to prevent — if Dell had been following the statute, it is likely that she would not have collided with Hart, and thus cause the accident that invited Pei to join in a rescue

Dell's behavior was unreasonable given ease of prevention — 6

- *Untaken precaution* — if Dell had given her full attention to her driving, she could have avoided the collision with Hart
- *Dell had a minimal burden* — only needed to look out, wait to read CD notes and lower the volume (any of which might have prevented the collision with Hart) — or made a phone call to get help sooner (to prevent Pei from being hit by Sole) — minimal time, effort and almost no cost (call might have small cost; all others cost nothing)
- *Potential harm high* — car accidents are often fatal, especially at night and in rain
- *Likelihood of serious harm very high* — car accidents happened fre-

quently, especially at night and in rain and at a dangerous place on the highway

Causation — Dell's breaches — negligent acts — caused Pei's injuries — 24

- By failing to look out while entering the highway Dell
- Did not see Hart
- Did not accelerate
- If had been paying attention, would have seen Hart and avoided colliding with him
- If had been paying attention, may have not have entered the highway until it was clear
- By having music too loud while entering the highway Dell did not hear Hart's horn and entered highway 3 in front of Hart, who then was unable to avoid hitting Dell with the his trailer
- Because Dell was listening to the music so loudly, did not hear horn. If music had not been so loud, then Dell could have heard Hart's horn and swerved to avoid collision with Hart
- Even if Hart was partially at fault when he collided with Dell on Highway 3, Dell's acts contributed to causing the collision which then caused Hart's trailer to overturn on Highway 3.
- Because the trailer was overturned, rescuers arrived to help — Pei was among those who arrived to help out.
- Because Dell did not contact emergency services, Pei was still trying to help move the trailer after 90 minutes.
- Because Pei was helping to move the trailer from Highway 3 he was hit by Sole, a drunk driver.
- Because Pei was hit by a drunk driver he was physically injured.

Proximate Cause — Dell is legally responsible for Pei's injury — 24

- Negligent actors, such as Dell, are liable to injuries that happen to those who come to rescue
- Dell is liable for all the foreseeable results of her negligent acts
- *Foreseeable plaintiff* — Pei is rescuer — "danger invites rescue"
- *Foreseeable injury* — likely that someone coming to the rescue at an accident on a highway could be injured by another motorist, especially at night, in the rain, and at a dangerous point in the highway (hill restricting visibility)
- *Foreseeable intervening actor* — with accident on the highway, could foresee that other cars would be coming and foreseeable that another driver would not use reasonable care when driving, thus injuring Pei, the rescuer
- *Also foreseeable that* drunk driver would be on the roads — all too

common

- It is fair for Dell to be liable for Pei's injuries — as an innocent victim harmed as a result of Dell's negligent acts, Dell should be liable for Pei's damages
- Policy is to encourage others to rescue — if Dell not liable, then would discourage other rescuers from helping

Damages — Pei suffered actual harm — 4

- Pei was badly hurt — may be confined to wheel chair for rest of life
- Fractured legs
- Shattered pelvis
- Injured spinal column

Policy — It is fair for Dell to be held liable for 95% of Pei's injuries — 10

- As innocent victim, Pei should be compensated for his severe and permanent injuries — as between Dell and Pei, Dell should be required to pay for Pei's injuries because her unreasonable acts caused Pei to be on the highway and injured
- It is fair that Dell pay for 95% of Pei's injuries as doing so is likely to deter Dell and other drivers from driving unreasonably
- It is fair for Dell to pay for 95% of Pei's injuries as Pei is a rescuer and rescuers should be encouraged to help — not compensating Pei would discourage and deter other rescuers
- Policy can also be included in other areas to get full points

Overall organization, formatting, conciseness and language precision — 10

- Follows requested format
- Uses headings for different sections
- Uses precise and accurate language
- Avoids excess words
- Organizes essay around different points